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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT SEATTLE

6 IRONBURG INVENTIONS LTD.,

7 Plaintiff,

8 v.

9 VALVE CORPORATION,

10 Defendant.

C17-1182 TSZ

ORDER

11 THIS MATTER comes before the Court to construe certain claim terms in United  
12 States Patent Nos. 8,641,525 (the “525 Patent”) and 9,089,770 (the “770 Patent”),  
13 pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995), and  
14 *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005). Before this action was  
15 transferred from the Northern District of Georgia, the parties submitted a Joint Claim  
16 Construction Statement, docket no. 64, attached to which was a list of eighteen disputed  
17 claim terms. Ex. 1 (docket no. 64-1). The last nine of those eighteen terms relate to  
18 United States Patent Nos. 9,289,688 and 9,352,229, as to which the Court has stayed  
19 plaintiff’s infringement claims. *See* Minute Order at ¶ 2(b) (docket no. 148). With  
20 regard to the first, third, and fourth disputed claim terms, namely (1) directional  
21 references (*i.e.*, top, bottom, front, back, end, side, inner, outer, upper, lower),  
22 (3) “inherently resilient and flexible,” and (4 ) “substantially the full distance between the  
23 top edge and the bottom edge,” the Court previously adopted the Patent Trial and Appeal

1 Board's interpretations. Minute Order at ¶ 1 (docket no. 153). The fifth disputed claim  
2 term, *i.e.*, (5) "the front end," was stricken from the parties' joint claim chart and will not  
3 be construed by the Court. *See id.* at ¶ 2.

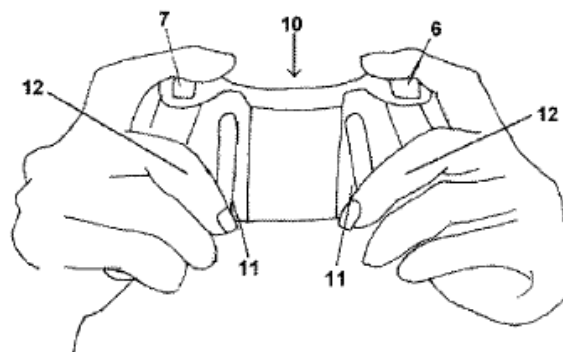
4 Defendant Valve Corporation ("Valve") contends that the second, fourth, sixth,  
5 seventh, and eighth disputed claim terms are indefinite. In adopting the Patent Trial and  
6 Appeal Board's interpretation of the fourth disputed claim term, the Court reserved ruling  
7 on whether the term is indefinite. *See id.* at ¶ 1. The second and sixth disputed claim  
8 terms are duplicative, both involving (2)/(6) "elongate member," which appears in each  
9 patent at issue. Valve has offered a construction of "elongate member" in the event that  
10 the Court does not find the term indefinite. With regard to the seventh and eighth  
11 disputed claim terms, namely (7) "a first/second distance between the top edge and the  
12 bottom edge" and (8) "substantially all of the first/second distance," the parties have  
13 agreed that, if the Court concludes such claim terms are not indefinite, the Court need not  
14 further construe such claim terms.

15 The Court is asked, however, to construe the ninth disputed claim term, which is  
16 (9) "the medial portion is closer to the top edge than a distal end of each of the first  
17 handle and the second handle." *See* Tr. (Jan. 5, 2018) at 19-22 (docket no. 157). As a  
18 result, the Court will first consider whether disputed claim terms (2)/(6), (4), (7), and (8)  
19 are indefinite, and regardless of how it rules on that question, the Court will then address  
20 the parties' request that disputed claim term (9) be construed. The other disputed claim  
21 term that might require interpretation is (2)/(6) "elongate member," but only if it is not  
22 deemed indefinite. Having reviewed the parties' supplemental briefs and other relevant  
23 filings, the Court now enters the following order.

## Background

Both the '525 Patent and the '770 Patent disclose an “improved controller for a game console that is intended to be held by a user in both hands in the same manner as a conventional controller,” but which has “two additional controls located on the back in positions to be operated by the middle fingers of a user.” '525 Patent & '770 Patent at Abstract. With one exception, the disputed claim terms involve limitations related to the rear controls, which are described in the specification as “paddles **11**” and in the claims as including an “elongate member.” *See id.* at Col. 3, Line 51; '525 Patent at Col. 4, Line 52; '770 Patent at Col. 4, Lines 50-52. The '525 Patent requires that each “elongate member” extend “substantially the full distance between the top edge and the bottom edge” of the outer case of the hand held controller. '525 Patent at Col. 4, Lines 53-54. In contrast, the '770 Patent describes each “elongate member” independently, with the “first elongate member” extending “at least half of a first distance between the top edge and the bottom edge” and the “second elongate member” extending “at least half of a second distance between the top edge and the bottom edge” of the outer case of the video game controller. '770 Patent at Col. 4, Lines 53-59. Both patents contain the following

illustration:



'525 Patent & '770 Patent at Fig. 3. In a separate, dependent claim, the '770 Patent states that the first elongate member must extend “along substantially all of the first distance,”

1 while the second elongate member must extend “along substantially all of the second  
2 distance.” ’770 Patent at Col. 4, Lines 61-64 (Claim 2). In a different dependent claim,  
3 the ’770 Patent specifies that the “medial portion” between the first convex portion of the  
4 bottom edge of the video game controller, which defines the first handle, and the second  
5 convex portion of the bottom edge of the video game controller, which defines the second  
6 handle, must be “closer to the top edge than a distal end of each of the first handle and the  
7 second handle.” *Id.* at Col. 5, Lines 8-10 (Claim 5); *see also* Col. 4, Line 65 – Col. 5,  
8 Line 3 (Claim 3 on which Claim 5 depends). This limitation concerning the “medial  
9 portion” is the only disputed claim term that does not involve the controls (or paddles or  
10 elongate members) on the back of the device.

## 11 **Discussion**

### 12 **A. Indefiniteness<sup>1</sup>**

13 A patent is presumed valid. 35 U.S.C. § 282(a). Such presumption may be  
14 overcome on the ground of indefiniteness only if a patent’s “claims, read in light of the  
15 specification delineating the patent, and the prosecution history, fail to inform, with  
16 reasonable certainty, those skilled in the art about the scope of the invention.” *Nautilus*,

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18 <sup>1</sup> The Court is unconvinced by plaintiff’s argument that, in pursuing an inter partes review before the  
19 Patent Trial and Appeal Board, Valve somehow conceded that the terms of the patents at issue are not  
20 indefinite. Valve could not have raised indefiniteness in an inter partes review, *see* 35 U.S.C. § 311(b),  
21 and thus, it cannot be deemed to have forfeited its right to present such defense in this matter. Similarly,  
22 collateral estoppel or issue preclusion does not operate to bar Valve from presenting its indefiniteness  
23 contentions to this Court. *See Granite Rock Co. v. Int’l Bhd. of Teamsters, Freight, Constr., Gen. Drivers, Warehousemen & Helpers, Local 287*, 649 F.3d 1067, 1070 (9th Cir. 2011) (collateral estoppel requires, at a minimum, that the issue sought to be relitigated be identical to an issue necessarily decided in a previous proceeding). Finally, for the same reason that the positions taken by Valve during inter partes review do not bind it in this litigation with respect to indefiniteness, the contentions made by third party Collective Minds Gaming Co., Ltd. in separate inter partes review proceedings have no persuasive value on the subject.

1 Inc. v. Biosig Instruments, Inc., 134 S. Ct. 2120, 2124 (2014). An invalidity defense must  
2 be proven by “clear and convincing evidence.” Microsoft Corp. v. i4i Ltd. P’ship, 564  
3 U.S. 91, 95 (2011). The Court concludes that Valve has not carried its burden of showing  
4 that disputed claim terms (2)/(6) “elongate member,” (4) “substantially the full distance  
5 between the top edge and the bottom edge,” (7) “a first/second distance between the top  
6 edge and the bottom edge,” and (8) “substantially all of the first/second distance” are  
7 indefinite. The disputed claim terms contain words of degree (“elongate,” “between,”  
8 and “substantially”) that provide a sufficient standard of measurement.

9 As observed by the Federal Circuit, claim language “employing terms of degree  
10 has long been found definite where it provided enough certainty to one of skill in the art  
11 when read in the context of the invention.” Biosig Instruments, Inc. v. Nautilus, Inc., 783  
12 F.3d 1374, 1378 (Fed. Cir. 2015). The certainty that the law requires in patents is not  
13 greater than is reasonable and, in evaluating a claim for indefiniteness, the Court must  
14 take into account the inherent limitations of language, as well as the “modicum of  
15 uncertainty” that is the “price of ensuring the appropriate incentives for innovation.” See  
16 id. at 1378-79 (quoting Nautilus, 134 S. Ct. at 2128). A patent must merely be “precise  
17 enough to afford clear notice of what is claimed, thereby ‘appris[ing] the public of what  
18 is still open to them.’” Id. at 1378 (quoting Nautilus, 134 S. Ct. at 2129 (alteration in  
19 original) (quoting Markman, 517 U.S. at 373)).

20 In Biosig, on remand from the Supreme Court, the Federal Circuit held that the  
21 term “spaced relationship” was not indefinite. The patent at issue was for a heart rate  
22 monitor that included (coincidentally) an “elongate member” with a first and second half;  
23 each half contained a live electrode and a common electrode in “spaced relationship”

1 with each other. 783 F.3d at 1376. The Federal Circuit reiterated its earlier analysis that  
2 an ordinarily skilled artisan would understand the claim language to require “the spaced  
3 relationship to be neither infinitesimally small nor greater than the width of a user’s  
4 hands.” *Id.* at 1382. The *Biosig* Court reasoned that the distance between the electrodes  
5 could not exceed the width of a user’s hands because the patent claim required the  
6 electrodes to “independently detect electrical signals at two distinct points of a hand,” and  
7 that an infinitesimally small distance between the electrodes was infeasible because it  
8 would effectively merge the electrodes into one detection point. *See id.* at 1383 (quoting  
9 *Biosig Instruments, Inc. v. Nautilus, Inc.*, 715 F.3d 891, 899 (Fed. Cir. 2013), *vacated*,  
10 134 S. Ct. 2120 (2014)). As a result, the Federal Circuit concluded that a skilled artisan  
11 “would understand the inherent parameters of the invention as provided in the intrinsic  
12 evidence.” *Id.* at 1384.

### 13 **1. Elongate Member**

14 *Biosig* undermines Valve’s contention that disputed claim term (2)/(6) “elongate  
15 member” is indefinite. *Biosig* is not the only decision of the Federal Circuit involving  
16 claim language that included the phrase “elongate member”<sup>2</sup> or the term “elongate” to  
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19 <sup>2</sup> *See Red Dog Mobile Shelters, LLC v. Kat Indus., Inc.*, 664 Fed. App’x 905 (Fed. Cir. 2016) (“elongate  
20 member” in patent for re-deployable mobile above-ground shelter); *Hologic, Inc. v. SenoRx, Inc.*, 639  
21 F.3d 1329 (Fed. Cir. 2011) (“elongate member” in patent for a surgical apparatus to provide balloon  
22 brachytherapy, a form of radiation treatment); *Cordis Corp. v. Boston Scientific Corp.*, 99 Fed. App’x 928  
23 (Fed. Cir. 2004) (“elongate member” in patent for a balloon-expandable coronary stent); *Thomas & Betts  
Corp. v. Litton Sys., Inc.*, 720 F.2d 1572 (Fed. Cir. 1983) (“elongate member” in patent for an electrical  
connecting device); *see also Voda v. Cordis Corp.*, 536 F.3d 1311 (Fed. Cir. 2008) (“elongate tubular  
member” in patent for assembly guiding the path of a therapeutic catheter); *Union Carbide Corp. v. Am.  
Can Co.*, 724 F.2d 1567 (Fed. Cir. 1984) (“elongate flexible binding member” in patent for packaging  
process).

1 modify another noun, for example, guard panel, stem, tube, or base portion.<sup>3</sup> Despite the  
2 prevalence of the word “elongate” in patents spanning a variety of industries, Valve has  
3 cited no case in which the Federal Circuit has found the term “elongate,” when used as an  
4 adjective, to be indefinite. Rather, in at least one (albeit unpublished) decision, the  
5 Federal Circuit has construed “elongate” consistently with its dictionary meaning as  
6 referring to “a structure ‘having a form notably long in comparison to its width.’” See  
7 Dana Innovations v. Speakercraft, Inc., 1996 WL 748250 at \*2 (Fed. Cir. Dec. 2, 1996)  
8 (citing Webster’s Third New Int’l Dictionary 737 (1986)).

9 Valve’s reliance on another unpublished decision, GE Lighting Solutions, LLC v.  
10 Lights of Am., Inc., 663 Fed. App’x 938 (Fed. Cir. 2016), is misplaced. The patent in that  
11 case used the verb form “elongated,” which connotes an “extending in length.” See id. at  
12 940. The patent claims disclosed a “thermally conductive core” and required that such  
13 core be “elongated.” Id. Acknowledging that “elongated” is “undoubtedly a term of  
14 degree,” the GE Lighting Court concluded that the verb tense was indefinite because it set  
15 no bounds for the dimensions of the core, the specification offered no explanation, the  
16 drawings provided no assistance, and the prosecution history merely informed a skilled  
17 artisan that the core could not be “disk or plate shaped” or “generally planar.” Id. at 940-  
18 41. In contrast, in this matter, the patents use the word “elongate” in its usual sense, as a  
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21 <sup>3</sup> L.B. Plastics, Inc. v. Amerimax Home Prods., Inc., 499 F.3d 1303 (Fed. Cir. 2007) (“elongate polymer  
22 guard panel” in patent for composite gutter guard); Howmedica Osteonics Corp. v. Tranquil Prospects,  
23 Ltd., 401 F.3d 1367 (Fed. Cir. 2005) (“elongate stem” in patent for an intramedullary prosthesis (hip joint  
replacement)); Stryker Corp. v. Davol Inc., 234 F.3d 1252 (Fed. Cir. 2000) (“elongate tube” in patent for  
surgical irrigation system); In re Fritch, 972 F.2d 1260 (Fed. Cir. 1992) (“continuous elongate, thin  
gauge, flexible base portion” in patent for landscape edging device).

1 modifier indicating that an element is “notably long in comparison to its width,” and the  
2 specification and drawings reflect such interpretation. See ’525 Patent & ’770 Patent at  
3 Col. 3, Lines 51-53 (“The paddles **11** are elongate in shape and substantially extend in a  
4 direction from the top edge to bottom edge of the controller.”); see also id. at Figs. 2 & 3.  
5 Contrary to Valve’s suggestion, disputed claim term (2)/(6) “elongate member” is not  
6 indefinite.

## 7       **2. Substantially**

8       The requirement that the elongate members extend “substantially the full distance  
9 between the top edge and the bottom edge” of the outer case of the hand held controller,  
10 as set forth in disputed claim term (4), is likewise not indefinite. The Patent Trial and  
11 Appeal Board has construed this phrase as meaning that the elongate members extend  
12 “largely but not necessarily the entire distance between the top and the bottom edges.”  
13 Ex. C to Becker Decl. (docket no. 142-3 at 14). Valve challenges the substitution of the  
14 word “largely” for “substantially,” arguing that both expressions are vague and fail to  
15 advise a person of ordinary skill in the art how long the elongate members must be.

16       The Court disagrees. The adverb “substantially” is a term of approximation  
17 generally understood to indicate “largely but not wholly that which is specified.” See  
18 LNP Eng’g Plastics, Inc. v. Miller Waste Mills, Inc., 275 F.3d 1347, 1354 (Fed. Cir.  
19 2001) (quoting Webster’s Ninth New Collegiate Dictionary 1176 (9th ed. 1983)). With  
20 respect to the rear controls, the word “substantially” is reasonably precise, given that the  
21 purpose of the elongate shape is to allow “a user to engage the paddles with any of the  
22 middle, ring, or little finger.” See ’525 Patent at Col. 3, Lines 56-58. As in Biosig, in  
23 which the term “spaced relationship” correlated with the width of a user’s hand, in this



1 matter, the elongate members, which extend “substantially the full distance” between the  
2 top and bottom edges of the controller case, can be calibrated by a skilled artisan to suit  
3 the average span of a human hand.<sup>4</sup> *See Biosig*, 783 F.3d at 1383; *see also Andrew Corp.*  
4 *v. Gabriel Elecs., Inc.*, 847 F.2d 819, 821-22 (Fed. Cir. 1988) (reversing the district  
5 court’s conclusion that the phrases “substantially equal” and “closely approximate” were  
6 indefinite). Thus, disputed claim term (4) does not support Valve’s invalidity contention,  
7 and it will be construed in the manner articulated by the Patent Trial and Appeal Board.

### 8       **3. First/Second Distance**

9       As identified by the parties, disputed claim terms (7) “a first/second distance  
10 between the top edge and the bottom edge” and (8) “substantially all of the first/second  
11 distance” are too truncated for an appropriate indefiniteness analysis. These phrases must  
12 be understood in the context in which they appear in the claims at issue. Claim 1 of the  
13 ’770 Patent discloses a video game controller with (i) an outer case having a top edge and  
14 a bottom edge, (ii) a “first back control,” and (iii) a “second back control.” ’770 Patent at  
15 Col. 4, Lines 39-47. The first back control includes a “first elongate member” and the  
16 second back control includes a “second elongate member.” *Id.* at Col. 4, Lines 49-52.  
17 The first elongate member “extends along at least half of a first distance between the top  
18 edge and the bottom edge,” while the second elongate member “extends along at least  
19 half of a second distance between the top edge and the bottom edge.” *Id.* at Col. 4, Lines  
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21 <sup>4</sup> For this reason, Valve’s reliance on *Fairfield Indus., Inc. v. Wireless Seismic, Inc.*, 2015 WL 1034275  
22 (S.D. Tex. Mar. 10, 2015), is misplaced. *See Legacy Separators LLC v. Halliburton Energy Servs. Inc.*,  
23 2016 WL 3017140 at \*8-\*9 (S.D. Tex. May 26, 2016) (distinguishing *Fairfield* and concluding that the  
term “substantially” is not indefinite when “used to account for natural limitations”).

53-59. Each distance is measured along “the longitudinal axis” of the elongate member.  
Id. at Col. 4, Lines 55-56 & 59-60. Claim 2 of the ’770 Patent, which depends on  
Claim 1, indicates that the first elongate member “extends along substantially all of the  
first distance,” while the second elongate member “extends along substantially all of the  
second distance.” Id. at Col. 4, Lines 61-64. Separately defining the two elongate  
members permits them to be of different lengths; however, the first and second distances  
could also be equivalent.

The Court is satisfied that the claim language is not indefinite. Both the first and  
second distance must be within the dimensions of the outer case, *i.e.*, between the top and  
bottom edges of the case. This limitation establishes a maximum span with reasonable  
certainty. Given the purpose of the elongate members, which is to allow a user to engage  
the back controls with the middle, ring, or little fingers, *see* ’770 Patent at Col. 3, Lines  
56-58, the first and second distances cannot be “infinitesimally small,” *see Biosig*, 783  
F.3d at 1383. Rather, the minimum first and second distances must be in a range that  
would reach the area of the designated fingers, taking into account that the length of each  
elongate member must be at least half of the respective distance for purposes of Claim 1,  
and substantially all of the respective distance for purposes of Claim 2. For the reasons  
previously discussed, use of the term “substantially” does not render Claim 2 indefinite.  
Because a skilled artisan would understand the parameters outlined in the claim language  
with reference to the average size of a human hand, the Court concludes that disputed  
claim terms (7) and (8) are not indefinite. *See Andrew Corp.*, 847 F.2d at 821-22  
(observing that this type of imprecision in a claim limitation “does not impart invalidity,”

1 but is instead “to be considered in determination of infringement”). The Court concludes  
2 that Valve’s indefiniteness challenges to the ’525 and ’770 Patents lack merit.<sup>5</sup>

3 **B. Claim Construction**

4 The Court has both the authority and the obligation to construe as a matter of law  
5 the meaning of language used in a patent claim. *Markman*, 52 F.3d at 979. In doing so,  
6 the Court must consider the intrinsic evidence in the record, meaning the claims, the  
7 specification, and the prosecution history.<sup>6</sup> *Id.* The words of a patent claim are generally  
8 assigned their “ordinary and customary meaning.” *Phillips*, 415 F.3d at 1312.<sup>7</sup> When, as  
9 is the situation here, the claim terms are clear enough to permit the trier of fact to perform  
10 its work, the Court need not engage in further analysis or attempt to rewrite or otherwise  
11 alter the language that has received the United States Patent and Trademark Office’s

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13 <sup>5</sup> Before this matter was transferred from the Northern District of Georgia, plaintiff moved to strike and  
14 exclude the opinions of Valve’s expert Robert Dezmelyk. After the case was transferred, the Clerk of the  
15 Court advised counsel that all undecided motions must be noted in accordance with Local Civil Rule 7(d).  
16 *See* Letter (docket no. 118). Plaintiff did not note the motion or otherwise bring it to the Court’s attention  
17 until it filed its supplemental response brief in connection with claim construction. *See* Pla.’s Supp. Resp.  
18 Br. at 3 (docket no. 169 at 6). In light of the rulings herein regarding Valve’s assertions of indefiniteness,  
19 plaintiff’s motion to strike, docket no. 70, is STRICKEN as moot.

17 <sup>6</sup> The specification is “the single best guide to the meaning of a disputed term.” *Phillips*, 415 F.3d at  
18 1315. If the specification reveals a definition given to a claim term that differs from the meaning it would  
19 otherwise possess, the inventor’s lexicography trumps the ordinary and customary, or dictionary,  
20 construction. *Id.* at 1316. Similarly, the prosecution history evidences how the inventor understood the  
21 terms used in the patent. *Id.* at 1317. Because the prosecution history, however, represents the “ongoing  
22 negotiation” between the United States Patent and Trademark Office and the applicant, it might suffer  
23 from a lack of clarity and is often less useful for claim construction purposes than the specification. *Id.*  
In addition, although the prosecution history “can and should be used to understand the language used in  
the claims,” it may not itself “enlarge, diminish, or vary” the limitations in the claims. *Markman*, 52 F.3d  
at 980.

21 <sup>7</sup> The ordinary and customary meaning of a claim term is the definition ascribed to it by “a person of  
22 ordinary skill in the art in question at the time of the invention.” *Phillips*, 415 F.3d at 1313. The context  
23 in which a claim term is used might also be instructive. *Id.* at 1314. In addition, the other claims of a  
patent might illuminate the meaning of a term, through consistent usage of the same term, or inclusion in  
a dependent claim of an additional term not present in the related independent claim. *Id.* at 1314-15.

1 imprimatur. *See Ballard Med. Prods. v. Allegiance Healthcare Corp.*, 268 F.3d 1352,  
2 1358 (Fed. Cir. 2001) (“*Markman* does not require a district court to follow any particular  
3 procedure in conducting claim construction. It merely holds that claim construction is the  
4 province of the court, not a jury. . . . As long as the trial court construes the claims *to the*  
5 *extent necessary* to determine whether the accused device infringes, the court may  
6 approach the task in any way that it deems best.” (emphasis added)); *see also Static*  
7 *Control Components, Inc. v. Lexmark Int’l, Inc.*, 502 F. Supp. 2d 568, 575-76 (E.D. Ky.  
8 2007).<sup>8</sup>

9 **1. Elongate Member**

10 Valve proposes to interpret “elongate member” to mean “distinct slender object  
11 having a length much greater than a maximum width.” Valve’s construction improperly  
12 imports limitations (distinct, slender, much greater than a maximum) into the claims at  
13 issue, and the Court declines to adopt it. The term “elongate member” means what it  
14 says, and the Court is satisfied that no further interpretation is necessary.

15 **2. Medial Portion**

16 With respect to dependent Claim 5 of the ’770 Patent, Valve wishes to rewrite the  
17 claim language to read: “the medial portion is closer to the top edge **of the controller**  
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20 <sup>8</sup> In *Static Control*, the district court criticized one side’s “exhortation to attach a synonym to self-defined  
21 and simple words” because it invited “a meaningless result that mocks the notion of construction.” 502  
22 F. Supp. 2d at 576. The district court used as an example the term “dog,” which a party might argue, in  
23 light of intrinsic evidence, must be construed as weighing less than 50 pounds, and as a result, such  
party’s accused dog is non-infringing because it is too heavy. *Id.* at 575. Determining whether a “dog”  
has a maximum weight would be an exercise in claim construction, but deciding whether “dog” means  
“canine” is a pointless endeavor, prompting the query of how an accused “dog” would infringe but an  
accused “canine” would not. *Id.*

1 than **the medial portion is to** a distal end of each of the first handle and the second  
2 handle.” Ex. 1 to Joint Claim Constr. Stmt. (docket no. 64-1 at 8) (additional text in bold  
3 and underlined). These modifications are unnecessary and the Court declines to adopt  
4 them. The phrase “of the controller” is duplicative and technically incorrect. The term  
5 “top edge” is understood from the context of Claim 5, which depends on Claim 3, which  
6 in turn depends on Claim 1, in which “top edge” is defined as an element of the “outer  
7 case” of the video game controller. The verbiage “the medial portion is to” adds nothing,  
8 and it might create a limitation that is not in the language of Claim 5. The Court is  
9 persuaded that disputed claim term (9) need not be construed under *Markman*.

## 10 **Conclusion**

11 For the foregoing reasons, the Court ORDERS:

- 12 (1) Disputed claim terms (2)/(6), (4), (7), and (8) are not indefinite;
- 13 (2) Valve’s proposed interpretations of disputed claim terms (2)/(6) and (9)  
14 are rejected;
- 15 (3) The parties’ stipulated motion, docket no. 188, to continue the trial date  
16 and extend related deadlines is GRANTED in part and DENIED in part,  
17 as follows:
  - 18 (a) The deadline for disclosure of expert testimony pursuant to  
19 Federal Rule of Civil Procedure 26(a)(2) is EXTENDED to  
20 July 6, 2018; rebuttal experts shall be disclosed in accordance  
21 with Federal Rule of Civil Procedure 26(a)(2)(D)(ii);
  - 22 (b) The deadline for filing discovery motions is EXTENDED to  
23 July 19, 2018;
  - 24 (c) The deadline for completing discovery is EXTENDED to  
25 August 15, 2018;
  - 26 (d) The deadline for filing dispositive motions is EXTENDED to  
27 August 23, 2018;

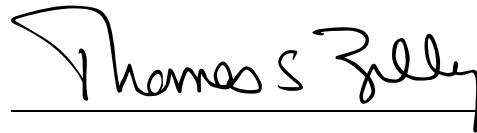
1 (e) The deadline for mediation is EXTENDED to September 14,  
2 2018; and

3 (f) All other dates and deadlines set forth in the Minute Order  
4 entered January 8, 2018, docket no. 153, shall remain in full  
5 force and effect.

6 (4) The Clerk is directed to send a copy of this Order to all counsel of  
7 record and to Magistrate Judge Donohue.

8 IT IS SO ORDERED.

9 Dated this 7th day of June, 2018.

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11 Thomas S. Zilly  
12 United States District Judge  
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